

REMARKS

Claims 7-14 are currently pending. Claims 7-10 are withdrawn from consideration in view of the restriction discussed below. Claims 11-14 are currently under examination.

Interview Summary :

During a telephone conversation with Examiner Huang on September 22, 2004, a restriction was discussed between claims 7-10, drawn to compound of formula II and claims 11-14, drawn to compounds of formula IV. The discussion resulted in a restriction requirement being issued between the two sets of claims, the specifics of which are discussed below. The Applicants would like to thank the Examiner for her courtesy during the aforementioned discussions.

Restriction under 35 USC 121:

Group I: Claims 7-10, drawn to compounds of formula II.

Group II: Claims 11-14, drawn to compounds of formula IV.

Applicants elect to prosecute group II, claims 11-14 without traverse. Applicants further retain the right to file divisional application to the subject matter of claims 7-10, which is Applicants right under 37 CFR 1.142(b).

Rejections under 35 USC 112, first paragraph:

Claims 11-13 are rejected as failing to comply with the written description requirement. Applicants believe that the amendments to these claims are sufficient to overcome the rejections; therefore, withdrawal of the rejection is respectfully requested. Applicants would also like to thank the Examiner for her suggestions on how to overcome the rejections.

Rejections under 35 USC 112, second paragraph:

Claims 11-14 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants believe that the amendments to these claims are sufficient to overcome the rejections; therefore, withdrawal of the rejection is respectfully requested. Applicants would also like to thank the Examiner for her suggestions on how to overcome the rejections.

Double Patenting:

Claims 11-14 are rejected under judicially created doctrine of obviousness-type double patenting. While not agreeing with the propriety of the rejection and solely to advance prosecution, a terminal disclaimer under 37 CFR 1.321(c), including a free set forth under 37 CFR 1.20(d) is being filed with this response. Applicants believe that the aforementioned terminal disclaimer is sufficient to overcome the rejection and withdrawal of the same is respectfully requested.

In view of the above amendments and remarks, Applicants respectfully submit that this application is now in condition for allowance and earnestly request such action.

If any points remain at issue which can best be resolved by way of a telephonic or personal interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



Andrea D. Small
Attorney for Applicant(s)
Reg. No. 54,859

Patent Department
Boehringer Ingelheim Corp.
900 Ridgebury Road
P.O. Box 368
Ridgefield, CT. 06877
Tel.: (203) 798-4816
Fax: (203) 798-4408